

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 15-0793

IN RE THE MATTER OF ESTATE OF:

FELICIA GARLAND SULLIVAN,

Deceased.

FILED

ORDER NOV 29 2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Appellant Terry J. Sullivan, appearing as a self-represented litigant, has filed a petition for rehearing in the captioned matter, together with a supporting affidavit. Counsel for Appellees the Arroyave brothers has not filed a response to the petition.

Sullivan argues that this court overlooked a fact or facts material to the decision. Sullivan maintains that no “evidence” by way of testimony at trial was presented with respect to the jewelry, and therefore, this Court erred in concluding that the Arroyaves obtained the jewelry with Terry’s knowledge and permission. We disagree. There was in fact little testimony presented at trial concerning the jewelry, but the parties submitted affidavits in support of their respective positions. Enrique Arroyave maintained via affidavit that the parties sat together and divided the jewelry, and that Sullivan did not then object to the brothers taking the subject jewelry. This affidavit was part of the record, and the court did not err in considering it together with the other evidence. Although Sullivan disputes the Arroyaves’ claim, given that there was competing evidence with respect to the disposition of the jewelry, it was within the province of the District Court to determine whom it would believe with respect to the disputed issue.

We also reject Terry’s remaining arguments. We did not err in refusing to consider legal arguments that were not raised by Terry at trial or in his opening brief on appeal. Moreover, Terry’s argument that the existence of the \$50,000 debt was already established by

summary judgment prior to trial is not well taken, as the District Court entered a ruling prior to trial in which it stayed the order of partial summary judgment in this regard, pending further orders of the court.

For these reasons,

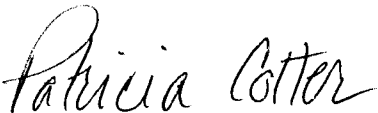
IT IS ORDERED that Sullivan's petition for rehearing is DENIED.

The Clerk of this Court shall serve notice of this Order upon all counsel of record and upon Terry Sullivan at his last known address.

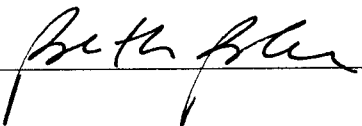
DATED this 29th day of November, 2016.



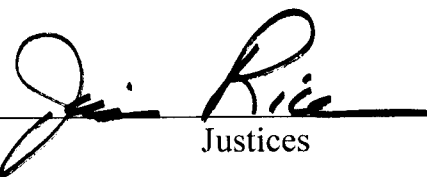
Chief Justice



Patricia Cotter



Beth Fisher



Justice